

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

GARY COLLINS,

Plaintiff,

v.

Civil Action No. 7:22CV00095
Franklin County Circuit Court Case No. CL21-4907

LOWE'S HOME IMPROVEMENT CENTERS, LLC,
D/B/A LOWE'S AT 800 OLD FRANKLIN TPKE
ROCKY MOUNT, VA 24151
STORE #2217

AND

JOHN DOE, EMPLOYEE OF LOWES STORE 2217,

Defendants.

NOTICE OF REMOVAL

Lowe's Home Centers, LLC ("Lowe's"), by counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby files this Notice of Removal on the following grounds:

1. Plaintiff Gary Collins filed a Complaint in the Circuit Court of Franklin County on December 29, 2021, alleging a personal injury claim against Lowe's for injuries from an incident on December 30, 2019, at a Lowe's store located in Franklin County, Virginia. Plaintiff filed suit for compensatory damages in the amount of \$760,500 and punitive damages in the amount of \$150,000. See Complaint (Ex. A).

2. Lowe's registered agent was served with copies of the Summons and Complaint on January 19, 2022.

3. Lowe's timely filed a Demurer (Ex. B) and Answer to the Complaint on or about February 9, 2022 (Ex. C).

GROUND FOR REMOVAL

4. Upon information and belief, Plaintiff is a Virginia resident and is, therefore, a citizen of Virginia. See Compl. ¶ 1.

5. Lowe's Home Centers, LLC is a North Carolina Limited Liability Company with its principal place of business in Wilkesboro, North Carolina. The sole member of Lowe's Home Centers, LLC is Lowe's Companies, Inc., which is a North Carolina corporation with its principal place of business in North Carolina.

6. Plaintiff named "John Doe" as a defendant. Where removal is based on diversity jurisdiction, "the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1); Waker v. Bankers Life Ins. Co., No. 7:18cv00118, 2018 U.S. Dist. LEXIS 87118, at *6-7 (W.D. Va. May 22, 2018); Berry v. SeaWorld Parks & Entm't, LLC, No. 4:14cv152, 2015 U.S. Dist. LEXIS 29900, at *4 (E.D. Va. Mar. 11, 2015).

7. This action therefore involves a controversy wholly between citizens of different states. There is complete diversity of citizenship.

8. The amount in controversy exceeds the jurisdictional requirement of \$75,000.

9. This Court therefore has original jurisdiction in this matter pursuant to 28 U.S.C. § 1332(a), and it may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

COMPLIANCE WITH PROCEDURAL REQUIREMENTS

10. Pursuant to 28 U.S.C. § 1446(b)(3), this Notice of Removal is filed within thirty (30) days after service of Plaintiff's Complaint.

11. Pursuant to 28 U.S.C. § 1441(a), venue of this removal action is proper in the Western District of Virginia, Roanoke Division, because it is in the district and division embracing the place where the state court action is pending.

12. Promptly after the filing of this Notice of Removal, Lowe's will give written notice of the removal to Plaintiff, the adverse party, and will file a copy of this Notice of Removal with the Circuit Court of Franklin County, as required by 28 U.S.C. § 1446(d).

13. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Lowe's in the state court action have been attached hereto.

WHEREFORE, Lowe's Home Centers, LLC, by counsel, respectfully requests that this action be removed from the Circuit Court of Franklin County to this Court.

LOWE'S HOME CENTERS, LLC

/s/Joseph M. Moore
Joseph M. Moore (VSB No. 48591)
Attorney for Lowe's
McCandlish Holton, PC
1111 E. Main Street, Suite 2100
P.O. Box 796
Richmond, VA 23218
(804) 775-3100 Telephone
(804) 819-1174 Facsimile
joe.moore@lawmh.com

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing to the following:

Sherry Q. Scott, Esq. (VSB No. 96271)
Law Office of Sherry Q. Scott, P.L.C.
65 East Court St.
Rocky Mount, VA 24151
(540) 265-7059
(540) 266-3143 Facsimile

And

Joseph D'Arezzo, Esq. (VSB No. 95751)
Resolution Law P.L.L.C.
92 Jenny Ct.
Strasburg, VA 22657
(540) 465-2101
Counsel for Plaintiff

And I hereby certify that on this 18th day of February, 2022, I caused a true copy of the foregoing to be sent via U.S. mail to:

Hon. Teresa J. Brown, Clerk
Franklin County Circuit Court
Civil Division
275 S. Main Street
Rocky Mount, VA

/s/Joseph M. Moore
Joseph M. Moore (VSB No. 48591)
Attorney for Lowe's
McCandlish Holton, PC
1111 E. Main Street, Suite 2100
P.O. Box 796
Richmond, VA 23218
(804) 775-3100 Telephone
(804) 819-1174 Facsimile
joe.moore@lawmh.com